



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 22, 1996

Mr. Dan T. Saluri
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR96-1217

Dear Mr. Saluri:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 40299.

The City of Lubbock (the "city") received two requests for copies of all proposals it received in response to Request for Proposal #13502. You assert that the requested proposals are excepted from required public disclosure pursuant to sections 552.104, 552.105, and 552.110 of the Government Code, and section 252.049 of the Local Government Code. Since the rights of third parties, the companies who submitted proposals, are implicated by the release of the requested information here, this office notified those parties of this request. See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances). We have received arguments from six of those companies so notified: LG & E Power Marketing, Inc., Duke/Louis Dreyfus L.L.C., Enron Power Marketing, Inc., The Texas Wind Power Company, Oklahoma Gas & Electric Company, and Central and Southwest Service, Inc.

Section 552.104 of the Government Code provides as follows:

Information is excepted from [required public disclosure] if it is information that, if released, would give advantage to a competitor or bidder.

The purpose of this exception is to protect the interests of a governmental body in situations such as competitive bidding and requests for proposals in which the governmental body may wish to withhold information to obtain more favorable offers. *See* Open Records Decision No. 592 (1991) at 8. Generally, section 552.104 does not except proposals from public disclosure after the contract has been awarded. *See* Open Records Decision No. 541 (1990).

You inform us that the "[c]ity has not let a contract under the RFP, negotiations may continue and release of the information requested could give an advantage to a competitor under the RFP. This would work a disadvantage to the [c]ity in negotiating a contract with that individual, including that limitations on alternate sources and costs to the [c]ity would be exposed."

We believe the city has established the applicability of section 552.104 in this situation. Accordingly, the city may withhold the requested information from public disclosure pursuant to section 552.104 of the Government Code.

Having concluded that the city may withhold the requested information from required public disclosure based on section 552.104, we need not consider the city's other arguments or those of the third parties at this time. We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 40299

Enclosures: Submitted documents

cc: Mr. Don A. Boatman
Division Superintendent
Southwestern Public Service Company
P.O. Box 631
Lubbock, Texas 79408
(w/o enclosures)

Mr. Noel K. Bunyan
President Powgasco, Ltd. Co.
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Ms. Nancy DeSchane
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Mr. Roger P. Gleson
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5530 SW Highway 66
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Mr. Joe F. Russell
Oklahoma Gas and Electric Company
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Mr. John M. Saenz
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The Texas Wind Power Company
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